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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,812	03/20/2006	Barry J. Byrne	36689.250	7623
27683 7590 05/01/2007 HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			EXAMINER WHITEMAN, BRIAN A	
			ART UNIT 1635	PAPER NUMBER
			MAIL DATE 05/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,812

Applicant(s)

BYRNE ET AL.

Examiner

Brian Whiteman

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8,9,16,27-36,38,41,45,56,58-60,65 and 66 is/are pending in the application.
- 4a) Of the above claim(s) 56 and 58-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8,9,16,27-36,38,41,45,65-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/28/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/3/05,5/8/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1, 8, 9, 16, 27-36, 38, 41, 45, 56, 58-60, and 65-66 are pending.

The amendment to claims 41 and 45 and the addition of claims 65 and 66 in paper filed on 3/28/07 is acknowledged.

Election/Restrictions

Applicant's election without traverse of Group I and species SEQ ID NO: 1 and 2 in the reply filed on 3/28/07 is acknowledged. SEQ ID NO: 4 is rejoined with the elected species because appears to be the same length as SEQ ID NO: 2 and SEQ ID NO: 4 is 100% identical to SEQ ID NO: 2.

Claims 56 and 58-60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and SEQ ID NO: 3, 5, 7, 9, 11, and 13 in claim and SEQ ID NO: 6, 8, 10, 12, 14, 15, and 17 in claims 8 and 27-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/28/07.

Information Disclosure Statement

The examiner has considered the international search report cited on the IDS, but did not initial the document because the document is not considered a published document.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, 9, 16, 27-36, 38, 41, 45, and 65-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Thorpe et al. (US 6,132,729, cited on PTO-1449). Thorpe teaches Factor VII polypeptide comprising the amino acid sequence comprising SEQ ID NO: 2 of applicant's invention (also known as SEQ ID NO: 4) and a nucleic acid comprising SEQ ID NO: 1 of applicant's invention. See columns 14 and 33 and SEQ ID NOs: 13 and 14. Also see SCORE on USPTO website. Thorpe teaches producing an AAV vector comprising a promoter operably linked to a Factor VII gene and cells comprising the gene (columns 32, 33, and 36).

Double Patenting

Applicant is advised that should SEQ ID NO: 2 in claims 8 and 27-30 be found allowable, SEQ ID NO: 4 in claims 8 and 27-30 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Art-Unit: 1635

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Whiteman whose telephone number is (571) 272-0764.

The examiner can normally be reached on Monday through Friday from 6:30 to 4:00 (Eastern Standard Time), with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Douglas Schultz, SPE – Art Unit 1635, can be reached at (571) 272-0763.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Fax Center number is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Brian Whiteman

A handwritten signature in black ink, appearing to be 'B. Whiteman', written in a cursive style.